



OFFICE OF PETITIONS

JUL 23 2003

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PTO/SB/64 (10-01)

Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCEJUL 23 2003
(m+S) JAC

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)		Docket Number (Optional) RE-001
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First named inventor: Robert W. Brown

Application No.: 09/585,788

Art Unit:

1761

Filed: June 5, 2000

Examiner: Tran

Title: ENGLISH MUFFIN BAGEL

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity-fee \$ 650 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

has been filed previously on _____.
 is enclosed herewith.

B. The issue fee of \$ _____.

has been paid previously on _____.
 is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

July 15, 2003

Date

Telephone
Number: (203) 496-7937

Carl C. Kling

Signature

Carl C. Kling

Typed or printed name

PO Box 305

Address

Hawthorne, NY 10532-0305

Enclosures: Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: Authorization and copy of Deposit Account payment

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

July 15, 2003

Date

Carl C. Kling

Signature

Carl C. Kling

Type or printed name of person signing certificate

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JUL 23 2003

PTO/SB/17 (10-02)

Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
U.S. GOVERNMENT PRINTING OFFICE: 2002 500-132-0032

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FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 1150.00)
METHOD OF PAYMENT (check all that apply)
 Check Credit card Money Order Other None

 Deposit Account:

Deposit Account Number **11-1257**
Deposit Account Name **Kling**

The Commissioner is authorized to: (check all that apply)
 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION**1. BASIC FILING FEE**

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 740	2001 370	Utility filing fee			
1002 330	2002 165	Design filing fee			
1003 510	2003 255	Plant filing fee			
1004 740	2004 370	Reissue filing fee			
1005 160	2005 80	Provisional filing fee			
SUBTOTAL (1) (\$)		—			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			-20** =	X =	
			- 3** =	X =	

Large Entity	Small Entity	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		—

*or number previously paid, if greater; For Reissues, see above

Complete if Known	
Application Number	09/585,788
Filing Date	June 5, 2000
First Named Inventor	Brown
Examiner Name	Tran
Art Unit	1761
Attorney Docket No.	RF-001

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Description	
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 400	2252 200	Extension for reply within second month	
1253 920	2253 460	Extension for reply within third month	
1254 1,440	2254 720	Extension for reply within fourth month	
1255 1,960	2255 980	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,280	2453 640	Petition to revive - unintentional	640
1501 1,280	2501 640	Utility issue fee (or reissue)	
1502 460	2502 230	Design issue fee	
1503 620	2503 310	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 740	2809 370	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 740	2810 370	For each additional invention to be examined (37 CFR 1.129(b))	
1801 740	2801 370	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify)		Maint fee +surcharge per	510

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 1150

SUBMITTED BY			
Name (Print/Type)	Carl C. Kling	Registration No. (Attorney/Agent)	19137
Signature	Carl C. Kling	Telephone	(203) 496-7937
		Date	7/15/2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



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CERTIFICATE OF MAILING

Date of mailing: July 15 2003

This certifies that the accompanying communication is being mailed on the above date of mailing, by prepaid FIRST CLASS MAIL properly addressed to:

Assistant Commissioner for Patents
Washington DC 20231

Carl C. Kling
Carl C. Kling

July 15 2003
Date

Art Unit: 1761

Docket: RE - 001

Date: July 15 2003

Application of: **Robert W. Brown and Bruce A. Kade**

Serial Number: 09/585,788 Filing Date: June 5, 2000

(Reissue application Certificate of Mailing Date June 1, 2000)

Examiner: **Lien Tran**

Title: **ENGLISH MUFFIN BAGEL**

Commissioner for Patents
Alexandria, VA

Sir:

This is a petition to revive.

This invention was patented June 2, 1998, and was the subject of a reissue application granted filing date June 5, 2000.

Prosecution continued, resulting in Office Actions and responses, including an interview with both inventors, the attorney, and the Examiner present. The interview took place with a response hand-carried to the Examiner. Through mix-up this was not entered; the inventors and attorney thought the response had been entered., and did not file another copy.

Abandonment happened. A petition to revive was denied because the statutory payment was \$20.00 short and the Deposit Account was also depleted, without knowledge of the attorney. Upon receiving notice, the attorney replenished the deposit account, but this took a very long time, apparently for security reasons after the 9/11 attack.

Telephone discussions convinced the attorney that all was well, and everyone waited.

Too long. Abandonment continues. This is a petition asking for all fees to be charged to the deposit account (!!-1257) and the reissue application be revived.

Meanwhile, the 3.5 year maintenance fee on the original patent -- chargeable to the reissue patent application -- has expired. This petition asks that the maintenance fee be accepted for the revived reissue patent application, and that the revived reissue patent application be returned to the Examiner for further action, with Notice of Allowance expected per the interview.

There was never any intention to abandon this patent application, which was thought to be awaiting action by the Examiner, nor to skimp on payment of fees, which were believed to have been properly paid from the

deposit account. Counsel, a semi-retired sole practitioner inexperienced in the payment of maintenance fees in reissue situations, simply did not know that the 3.5 maintenance fee on the original patent was required during pendency of the reissue. Counsel has subsequently found out that maintenance fees are required on such original patents during reissue prosecution, and will absorb all extra charges.

Please accept this petition to revive.

Robert W. Brown & Bruce A. Kade,
Inventors

By Carl C. Kling
Carl C. Kling, Attorney (Reg. 19137)